

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007 IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 29th day of July, two thousand eight.

PRESENT:

HON. DENNIS JACOBS,
Chief Judge,
HON. SONIA SOTOMAYOR,
HON. PETER W. HALL,
Circuit Judges.

MING YU WANG,
Petitioner,

v.

MICHAEL B. MUKASEY, ATTORNEY GENERAL,¹
Respondent.

07-2553-ag
NAC

¹Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Michael B. Mukasey is automatically substituted for former Attorney General Alberto R. Gonzales as the respondent in this case.

1 **FOR PETITIONER:** *Pro se*, New York, New York.

2
3 **FOR RESPONDENT:** Jeffrey S. Bucholtz, Acting
4 Assistant Attorney General, Shelley
5 R. Goad, Senior Litigation Counsel,
6 Carmel A. Morgan, Trial Attorney,
7 United States Department of Justice,
8 Civil Division, Office of
9 Immigration Litigation, Washington,
10 District of Columbia.

11
12 UPON DUE CONSIDERATION of this petition for review of a
13 decision of the Board of Immigration Appeals ("BIA"), it is
14 hereby ORDERED, ADJUDGED, AND DECREED, that the petition for
15 review is DENIED.

16 Petitioner Ming Yu Wang, a native and citizen of the
17 People's Republic of China, seeks review of the May 15, 2007
18 order of the BIA affirming the August 3, 2005 decision of
19 Immigration Judge ("IJ") Barbara A. Nelson, denying his
20 application for asylum, withholding of removal, and relief
21 under the Convention Against Torture ("CAT"). *In re Ming Yu*
22 *Wang*, No. A95 687 429 (B.I.A. May 15, 2007), *aff'g* No. A95
23 687 429 (Immig. Ct. N.Y. City Aug. 3, 2005). We assume the
24 parties' familiarity with the underlying facts and
25 procedural history of the case.

26 The submissions of *pro se* litigants are construed
27 liberally and interpreted to raise the strongest arguments
28 that they suggest. *See Triestman v. Fed. Bureau of Prisons*,
29 470 F.3d 471, 474 (2d Cir. 2006). When the BIA does not

1 expressly "adopt" the IJ's decision, but its brief opinion
2 closely tracks the IJ's reasoning, we may consider both the
3 IJ's and the BIA's opinions for the sake of completeness if
4 doing so does not affect our ultimate conclusion. *Wangchuck*
5 *v. DHS*, 448 F.3d 524, 528 (2d Cir. 2006). We review *de novo*
6 questions of law and the application of law to undisputed
7 fact. See *Secaida-Rosales v. INS*, 331 F.3d 297, 307 (2d
8 Cir. 2003). We review the agency's factual findings under
9 the substantial evidence standard. See 8 U.S.C. §
10 1252(b)(4)(B); *Dong Gao v. BIA*, 482 F.3d 122, 126 (2d Cir.
11 2007).

12 As a preliminary matter, pursuant to our decision in
13 *Shi Liang Lin v. U.S. Dep't of Justice*, 494 F.3d 296, 314
14 (2d Cir. 2007) (en banc), Wang is not *per se* eligible for
15 asylum based on his wife's alleged forced abortion.² See
16 *Gui Yin Liu v. INS*, 508 F.3d 716, 723 (2d Cir. 2007).

17 Regarding Wang's claim of religious persecution, we
18 find no error in the agency's conclusion that he failed to
19 carry his burden of proof for asylum when he did not provide

²Judge Sotomayor continues to believe that Shi Liang Lin was in error to the extent that it applied beyond unmarried partners, see Shi Liang Lin, 494 F.3d at 327 (Sotomayor, J., concurring), but notes that the Attorney General has since adopted the Court's construction of the statute and overruled the BIA's former per se rule of spousal eligibility, see In re J-S-, 24 I.& N. Dec. 520 (A.G. 2008).

1 material corroborating evidence that was reasonably
2 available to him. See *Jin Shui Qiu v. Ashcroft*, 329 F.3d
3 140, 153 (2d Cir. 2003), *overruled in part on other grounds*
4 *by Shi Liang Lin*, 494 F.3d at 305. While an applicant's own
5 testimony may sometimes be sufficient to meet his burden of
6 proof, an IJ may also require the submission of
7 corroborating evidence, or an explanation for its absence,
8 where one would reasonably expect such evidence to be
9 submitted. See *Diallo v. INS*, 232 F.3d 279, 285-86 (2d Cir.
10 2000). Here, the IJ gave weight to the absence of a written
11 statement from Wang's wife corroborating his claims. Wang
12 testified that he was in contact with his wife by phone and
13 that she helped him to obtain a letter from their
14 underground church. When asked to explain why his wife had
15 not provided a statement, Wang testified that it was because
16 she was illiterate, though he conceded that their 20-year-
17 old son could have helped his wife to write a statement.
18 Because the agency identified the particular piece of
19 missing, relevant documentation and properly found that this
20 document was "reasonably available" to Wang, the agency did
21 not err in denying his asylum claim for lack of
22 corroboration. *Jin Shui Qiu*, 329 F.3d at 153. Moreover,
23 Wang was given an opportunity to explain the absence of a
24 statement from his wife, *Cao He Lin v. U.S. Dep't of*

1 *Justice*, 428 F.3d 391, 394-95 (2d Cir. 2005), and he points
2 to no evidence that would have compelled the IJ to accept
3 that explanation. See 8 U.S.C. § 1252(b)(4)(B); *Majidi v.*
4 *Gonzales*, 430 F.3d 77, 80-81 (2d Cir. 2005).

5 Because Wang was unable to meet his burden of proof for
6 asylum, he was necessarily unable to meet the higher
7 standard required to succeed on a claim for withholding of
8 removal. See *Wu Biao Chen v. INS*, 344 F.3d 272, 275 (2d
9 Cir. 2003). Finally, the agency's finding that Wang did not
10 establish eligibility for CAT relief was not in error
11 because - consistent with the agency's findings that he
12 failed to provide reasonably available corroborative
13 evidence - he provided insufficient evidence that it was
14 more likely than not that he would be tortured in China.
15 See *Khouzam v. Ashcroft*, 361 F.3d 161, 168 (2d Cir. 2004).

16 For the foregoing reasons, the petition for review is
17 DENIED. As we have completed our review, Wang's pending
18 motion for a stay of removal in this petition is DISMISSED
19 as moot.

20 FOR THE COURT:
21 Catherine O'Hagan Wolfe, Clerk
22
23

24 By: _____